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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 47093-2019
Plaintiff-Respondent,)	
)	Bonneville County Case No. CR10-18-
v.)	12236
)	
ZACHARY TYLER ALLEN,)	
)	RESPONDENT’S BRIEF
Defendant-Appellant.)	
_____)	

Has Allen failed to show that the district court abused its sentencing discretion when it imposed a sentence of five years, with one and one half years fixed, and retained jurisdiction upon his conviction for forgery?

ARGUMENT

Allen Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

In December of 2018, Advantage Employer Solutions (“AES”) contacted law enforcement regarding forged and altered checks. (R., p. 10.) AES contracted with Dairy Queen in Idaho Falls, Idaho to handle their payroll and issued one check to Allen in the amount of \$14.84 as payment

for a single shift. (R., pp. 10-11.) Allen altered and forged that check to attempt to cash out a total amount of \$3,063.36 at various locations around the area and through a mobile banking app. (R., p. 11.) Wells Fargo notified law enforcement that Allen was attempting to cash another check. (Id.) Law enforcement arrived and observed Allen attempting to cash a forged check. (Id.) Allen admitted to altering and forging the check and receiving a total of \$2,316.52. (R., pp. 11, 46-52.)

The state charged Allen with one count of grand theft and one count of forgery. (R., pp. 30-31.) Pursuant to a plea agreement, Allen pled guilty to forgery and the State dismissed the count of grand theft. (R., pp. 35-39.) At sentencing, Allen argued for a sentence of three years with one year fixed and all time suspended; the State argued for eight years with two years fixed and for the court to retain jurisdiction, consistent with the recommendation made in the presentence investigation report (“PSI”). (Tr., p. 18, Ls. 4-16; PSI, pp. 16-17.) The district court imposed a sentence of five years, with one and one-half years fixed, and retained jurisdiction. (R., pp. 57-59; Tr., p. 22, Ls. 12-18.) Allen filed a Rule 35 motion for reconsideration of the sentence. (R., p. 63.) The district court denied the Rule 35 motion. (R., p. 107.) Allen filed a timely notice of appeal and subsequent amended notice of appeal.¹ (R., pp. 68-70, 121-24.) On appeal, Allen argues the district court abused its discretion by imposing an excessive sentence in light of mitigating factors. Allen has failed to show an abuse of discretion on the record.

B. Standard Of Review

The sentence imposed by the district court is reviewed for an abuse of discretion. State v. Matthews, 164 Idaho 605, 607, 434 P.3d 209, 211 (2018). “Under this standard, this Court

¹ While this case has been on appeal, Allen requested the district court relinquish jurisdiction. (APSI, pp. 1-7.) On January 2, 2020, the district court granted Allen’s request and issued an order relinquishing jurisdiction.

considers whether the trial court: (1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by an exercise of reason.” Id. (quotation marks and citation omitted).

C. Allen Has Shown No Abuse Of The District Court’s Sentencing Discretion

“When a trial court exercises its discretion in sentencing, the most fundamental requirement is reasonableness.” State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2015) (quotation marks and citation omitted). The Court considers the entire length of the sentence to determine its reasonableness. State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). “When reviewing the reasonableness of a sentence, this Court conducts an independent review of the record, giving consideration to the nature of the offense, the character of the offender and the protection of the public interest.” McIntosh, 160 Idaho at 8, 368 P.3d at 628. “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” Id. “A sentence fixed within the limits prescribed by statute will ordinarily not be considered an abuse of discretion by the trial court.” State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982). The appellant bears the burden of establishing that ““under any reasonable view of the facts, the sentence was excessive considering the objectives of criminal punishment.”” Matthews, 164 Idaho at 608, 434 P.3d at 212 (quoting State v. Varie, 135 Idaho 848, 856, 26 P.3d 31, 39 (2001)). ““In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ.”” Id. (quoting Stevens, 146 Idaho at 148-49, 191 P.2d at 26-27).

Here, the district court imposed a sentence within the statutory limits: conviction for felony forgery carries a maximum potential penalty of fourteen years, Idaho Code 18-3604, and the

district court imposed a sentence of five years with one and one-half years determinate, and retained jurisdiction, (R., p. 57). Thus, its sentence will not be considered an abuse of discretion unless Allen demonstrates that no reasonable mind could conclude the sentence was necessary to accomplish the objectives of sentencing . Allen has failed to do so. The district court properly recognized its discretion and applied the relevant legal standards in imposing sentence. (Tr., p. 8, Ls. 22-24; p. 21, Ls. 17-20.) The district court reviewed the PSI and other information before it, and considered the objectives of criminal punishment—protection of society, deterrence, punishment, and rehabilitation—in exercising its sentencing discretion. (Tr., p. 21, L. 17 – p. 22, L. 4.)

The district court’s sentence is reasonable in light of the circumstances in this case, and the objectives of criminal punishment. This case did not arise from one single act of forgery, but rather a series of alterations that Allen passed off as real to obtain over two thousand dollars in cash from financial institutions. (R., pp. 11, 46-52.) Although this is Allen’s first felony conviction, his misdemeanor record is extensive and another felony forgery charge was pending in a different county at the time of his sentencing in this case. (PSI, pp. 4-10.) The PSI addressed Allen’s lack of accountability for the conduct, noting that Allen “took little accountability for his actions in this and previous cases” and instead “placed blame on a dysfunctional childhood and lack of social support.” (PSI, p. 16.)

The sentence is also reasonable in light of Allen’s unstable environment and previous lack of success on probation. (PSI, p. 10.) The presentence investigation report detailed Allen’s history of instability in several aspects of his life. (PSI, pp. 11-13.)

[Allen] has a history of instability, and he provided inaccurate information during his interview, perhaps to make himself appear in a more favorable light. He reported that he is staying with a friend but that is only temporary. He continues to be unemployed although he is able to work through a temp agency. Again, he lacks

follow-through as he doesn't show up for scheduled shifts or calls out at the last minute. Mr. Allen does not have family support and it is unclear who his friends are, and if they are a positive influence.

(PSI, p. 16.) The PSI also noted Allen "has had little previous success on probation, as an adult or as a juvenile." (PSI, p. 10.) With respect to his employment, Allen provided inaccurate information about his prior and current employers. When the presentence investigator attempted to contact those employers, they reported that his work was inconsistent or never occurred. (PSI, p. 13 ("Allen works sporadically . . . but he has attendance issues"; "Hell no, I wouldn't hire that kid . . . [h]e's never worked here"; "[h]e hasn't worked here for a long time.")) The PSI commented that Allen "seems eager to do the right thing, [but] he has difficulty with follow-through," and "has been given a number of opportunities to succeed in the community but he has failed to take advantage of available resources." (PSI, p. 16.) The PSI recommended that Allen be sentenced to retained jurisdiction because "this program will provide him with long-term stability as well as necessary programming to enable him to be more successful when he returns to the community." (PSI, pp. 16-17.)

The district court expressed concerns that Allen was not in a position to be successful if immediately placed on probation:

I feel like you need some treatment, some classes, some programming as part of a rider program to help you prepare you for probation, help you be – help you develop some skills so you can do probation well. So I'm retaining jurisdiction on this.

...

[F]or me to feel comfortable with probation at this point, based upon everything going on, I feel like I just need to have you have some treatment under your belt and then get you more prepared to be out in the community and be ready for that.

(Tr., p. 22, L. 22 – p. 23, L. 1; p. 24, Ls. 2-6.) Appropriately, the district court imposed a sentence that addressed these concerns aimed to rehabilitate thinking errors, deter further criminal conduct, and ultimately prepare Allen to be successful on probation and in the community. The district court

did not abuse its sentencing discretion in imposing this reasonable sentence, supported by the record.

On appeal, Allen argues that the district court abused its discretion because the sentence is excessive in light of “multiple mitigating factors.” (Appellant’s brief, p. 4). Specifically, Allen argues that the sentence is excessive in light of his lack of prior felony convictions, unstable childhood, desire to improve himself, and acceptance of responsibility and remorse. However, the district court had this information before it and considered these factors in imposing sentence. The district court considered Allen’s criminal record, including his out-of-county pending felony forgery charge, and stated that it wasn’t comfortable with probation, considering “[t]here’s a lot of criminal thinking going on.” (Tr., p. 21, Ls. 20-24; p. 22, Ls. 20-22; p. 23, Ls. 11-13; see also PSI, pp. 4-10.) Additionally, the district court expressed concern regarding Allen’s lack of stability. (Tr., p. 21, L. 25 – p. 22, Ls. 4; p. 22, Ls. 19-22.) Allen asserts he “aspires to better himself by getting an education and perhaps joining the military,” and he accepted responsibility and was remorseful for his actions, pointing to language in the PSI to support those assertions. (Appellant’s brief, pp. 5-6.) However, the PSI also states that Allen “has been given a number of opportunities to succeed in the community and has failed to take advantage of available resources,” “lacks follow-through,” and “took little accountability for his actions in this and previous cases.” (PSI, p. 16.) In light of the record as a whole, Allen has failed to show that the sentence was excessive under any reasonable view of the facts and circumstances. Thus, Allen has failed to show that the district court abused its sentencing discretion in this case.

CONCLUSION

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 2nd day of January, 2020.

/s/ Kacey L. Jones
KACEY L. JONES
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of January, 2020, served a true and correct copy of the foregoing RESPONDENT’S BRIEF to the attorney listed below by means of iCourt File and Serve:

REED P. ANDERSON
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/s/ Kacey L. Jones
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